IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 322 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT
Versus
NAI KANAILAL ISHWARLAL & 3

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Appearance :
MR KP RAVAL APP for Appellant
MR H.S.MULIA for Respondents No. 1-4

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 23/10/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.R.VORA)

[1] Leave to appeal is granted. Appeal is admitted. Learned advocate Mr.H.S.Mulia waives service on behalf of the respondents.

[2] Instant appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and order delivered by the learned Additional Sessions Judge and 2nd Fast Track Judge, Mehsana on 31st March, 2004 in Sessions Case No.93/2003 whereby all the respondents herein – original accused of the said Sessions Case came to be acquitted by the trial Court for the charges levelled against them under Sections 302, 342, 323, 504, 506(2) and 114 of the Indian Penal Code.

[3] Learned APP Mr.K.P.Raval for the appellant – State and learned advocate Mr.H.S.Mulia for the respondents request this Court to hear the matter finally because the Record & Proceedings of the trial Court is available with this Court and that they would provide necessary copies of the evidence recorded during the trial Court and the copies of the documents produced in the trial Court. In the facts and

circumstances of this case, the matter was heard finally.

[4] The prosecution case briefly stated is in respect of the death of the complainant – Narendrabhai Ganpatlal and husband of respondent No.4 - Gayatriben Ishwarlal. Before the incident occurred on 26th July, 2002, their marriage had completed at about seven years. The respondent No.1, 2 and 3 are the brothers of respondent No.4 and brother-in-laws of deceased – Narendrabhai Ganpatlal. From the wedlock, complainant – deceased Narendrabhai Ganpatlal had a daughter named Akta, who was aged about five years on the day of the incident i.e. on 26th July, 2002. The marriage life of Narendrabhai and respondent No.4 was in rough weather and respondent No.4 – Gayatriben was displeased with her husband. Daughter Akta was staying at village : Denap at parental house of her mother, while Narendra and Gayatri were staying at village : Kahoda with family. On 26th July, 2002, Narendrabhai was on his business to sell lemon and had been to Siddhpur. At about 11.00 a.m, he returned to his village, he found that respondent No.4 – Gayatriben was not present at his house. On inquiry, he found that respondent No.4 – Gayatriben his wife had been to Denap because their daughter Akta staying at Denap was not well. The complainant – deceased

Narendrabhai also found that his wife had conveyed that complainant – deceased Narendrabhai should follow her and reach at Denap. Therefore, Narendrabhai and his uncle Arvindbhai on scooter reached at Denap at about 12 p.m. When they reached at the house of in-laws of Narendrabhai, all the respondents were present and started giving abuses to the complainant – deceased Narendrabhai, on seeing him. Narendrabhai and Arvindbhai both requested the respondents not to give abuses. The respondents, thereafter, got excited and started beating deceased Narendrabhai with fist and kick. Thereafter, respondents No.1, 2 and 3 dragged deceased Narendrabhai in adjoining house belonging to the respondents and he was confined there. Thereafter, his younger brother-in-law named as Bhuriya brought one bottle of acid and other respondents caught hold of deceased Narendrabhai and respondent No.1 and respondent No.2 forcibly thrust acid in the mouth of Narendrabhai and so Narendrabhai consumed considerable quantity of the acid. The complainant tried to save himself, but accused had beaten him to considerable extent, so he could not defend himself. According to the prosecution case, deceased Narendrabhai was locked in a room and he could not contact his uncle – Arvindbhai. Thereafter, at about 4.00 p.m in the evening, police came and he was taken

to Visnagar Hospital and from there, he was shifted to Civil Hospital, Mehsana. Thereafter, his relative shifted Narendrabhai to Lions Hospital at Mehsana where he gave this complaint to Police Inspector, Visnagar, which was registered as C.R.No.260/2004. Before that on receiving the information from Civil Hospital, an entry in this respect was made in police station register. However, on 10th August, 2002 in early morning, Narendrabhai died and crime came to be registered from his complaint, was investigated by Himmatsinh Bhupatsinh Rajput examined as P.W.11, the then P.S.I. of Visnagar Police Station. In pursuance of this , a charge-sheet came to be filed in the Court of learned Judicial Magistrate, First Class, Visnagar and learned Judicial Magistrate, First Class, Visnagar committed this case to the Court of Sessions, which was registered as Sessions Case No.93/2003. The said Sessions Case was made over to Additional Sessions Judge and Fast Track Judge, Mehsana who framed the charges against all the respondents vide Ex.5 on 6th February, 2004 and each of the respondents pleaded not guilty. The respondents – original accused, therefore, were put to trial.

[5] The prosecution examined as many as 11 witnesses and produced on record voluminous documentary evidence to

prove its case. On prosecution case being over, the further statements of each of the accused was recorded by the trial Court under Section 313 of the Criminal Procedure Code.

[6] Learned APP Mr.K.P.Raval for the appellant – State and learned advocate Mr.H.S.Mulia for the respondents were heard in great details in respect of this appeal.

[7] We have gone through the Record and Proceedings carefully and we have scanned the reasons assigned by the trial Court for conclusion of the acquittal. We have re-appreciated the evidence and have considered vital features and reasonable probabilities arising out of the circumstances of the case. We have considered the contention raised on behalf of the appellant as well as the respondents.

[8] Scanning through the evidence of prosecution case, it is found that P.W.1 – Dr.Pravinkumar Popatlal Soni, examined at Ex.12, Medical Officer, General Hospital Mehsana, who conducted the postmortem on the deadbody of deceased Narendrabhai on 10th August, 2002. According to him, there were internal injuries on account of consumption of acid, but no external injuries on the body, were found. He produced on

record the postmortem note at Ex.13. The probable cause of death is shock due to internal hemorrhage of peritonitis and septicemia due to multiple perforation of stomach and intestine. According to this Doctor, final cause of death could be given after analyzes of viscera taken from the deadbody. P.W.2 – Dr. Kantilal Magabhai Parmar examined at Ex.16, was Medical Officer, General Hospital, Visnagar and the deceased was brought to him on 26th July, 2002. The patient was brought by Arvindbhai, uncle of the patient and the patient was conscious and co-operative. In history, he stated that he himself had consumed acid in a bathroom. The witness gave the certificate which is produced on record at Ex.17. P.W.3 – Hargovanbhai Kashiram examined at Ex.18, is a Panch of panchnama at Ex.19 of scene of offence. He stated that scene of offence was at toilet and bucket was kept and one bottle of acid was also there. He has supported the panchnama at Ex.19. P.W.4 – Bharatbhai Babaldas examined at Ex.20, is a Panch of panchnama at Ex.21. This panchnama is again a panchnama of scene of offence where according to the prosecution case, deceased was beaten by the accused and the place was shown by Arvindbhai, the uncle of the deceased. However, this witness did not support the prosecution case. Inquest panchnama is placed on record at Ex.23 and arrest

panchnama of the accused is placed on record at Ex.24. P.W.5 – Nai Arvindkumar Ishwarbhai examined at Ex.26, is the uncle of the deceased, who had accompanied deceased – Narendrabhai at the residence of in-laws of deceased. He stated that he had been to Denap and accused – Gayatriben, wife of the deceased – Narendrabhai was there. There was some altercation between Narendrabhai and some persons, to whom he did not know. He was made to sit in a room and Narendrabhai was taken to some other place. He did not identify any of the accused before the Court and, therefore, he was declared hostile by the prosecution. In cross-examination of the defence, he admitted that Narendrabhai i.e. deceased conveyed to him that Narendrabhai was made to sit in the house of in-laws because they wanted to get him arrest by the police and on account of fear of the police, he had consumed acid. The deceased was taken to Visnagar Hospital by this witness. When deceased was taken to Visnagar Hospital, deceased was conscious and was speaking. He also admitted that quarrels took place between Gayatriben, the wife of the deceased – Narendrabhai and deceased - Narendrabhai and deceased – Narendrabhai was suspected the character of his wife. P.W.6 – Ganpatbhai Mohanlal examined at Ex.27, is the father of the deceased. He has no personal knowledge about

the incident. Though he stated in his deposition that at Mehsana, in the hospital of Lions Club, his son conveyed to him that the accused had beaten him and forcibly made him to consume the acid. He also admitted that on 26th July,2002, the accused – Gayatriben had filed a complaint against Narendrdabhai and this witness and in the said case, police had arrested them. He also stated that his son had injuries and he was treated for this also in the hospital. P.W.7 – Nai Pravinaben Ganpatbhai examined at Ex.28, is also a witness having no personal knowledge about the incident as she resided at Kahoda. According to her, in the morning of 26th July, 2002, Gayatriben, the wife of her deceased brother conveyed that their daughter – Akta staying at her parental home was sick and she intended to go at village : Denap. This witness – Pravinaben gave some money to Gayatriben and she went to Denap and, thereafter, in the evening, after Naredrabhai i.e. deceased and Arvindbhai, went to Denap, she knew that his brother had got sick and that the accused had forcibly made her brother to consume acid. P.W.8 – Dr. Rakeshbhai Pravinbhai Patva examined at Ex.29, was Medical Officer at Lions Club Hospital at Mehsana where the deceased Narendrabhai was brought on 27th July, 2002. According to this Doctor, the patient had complained of burning in the chest and

in abdomen etc. and his mouth was ulcerous. He was given immediate treatment. He was not in a position to take any food or liquid. On 10th August, 2002 at about 2.25 a.m during the treatment, deceased – Narendrabhai died. The witness produced on record the case papers at Ex.30. In cross-examination, he stated that Arvindbhai, Ganpatbhai and Ashokbhai had brought the deceased to the hospital. The history was given by relatives of the deceased and not by the deceased and in the case papers, it is noted that the history was given that accused had forcibly thrust acid in the mouth of the deceased. The patient was conscious, when he was brought to his hospital. P.W.9 – Mahendrasinh Lalsinh Rathod examined at Ex.31, was the then P.S.I., Visnagar City Police Station. According to him, on 26th July, 2002, P.S.O. Kalidas Visabhai had registered a crime being C.R.No.258/2002 for the charge under Section 498-A of the Indian Penal Code. He was investigating the said offence. He was in the Visnagar Police Station in pursuance of this investigation and P.S.O. informed him by telephone that Narendrabhai Nai was also admitted to Visnagar Hospital for the treatment because he had consumed acid and was referred to the hospital at Mehsana. According to him, the complaint filed by the Gayatriben and the case of consumption of acid was cross cases. He recorded the

statement of Arvindbhai, the uncle of deceased – Narendrabhai at Mehsana because the deceased was conscious. According to this witness, Arvindbhai had accompanied the deceased – Narendrabhai to Denap and some altercation had taken place. Narendrabhai was taken to some other house belonging to the accused, while Arvindbhai was made to sit in separate house. Thereafter, according to Arvindbhai, Gayatriben and her brother i.e accused stated that they were going to police for giving complaint and they left. Thereafter, he heard that in the separate house, deceased had consumed acid and, therefore, a crowd was gathered. In the meantime, police came from Visnagar and had taken Narendrabhai at Visnagar. In cross-examination, he admitted that in pursuance of a complaint given by Gayatriben, she had been to Visnagar Hospital for treatment because she was beaten by the deceased and Doctor had informed the police. At about 2.00 p.m., this crime was registered in Police Station on 26th July, 2002 in which deceased Narendrabhai, his father, his sister and his mother were the accused. He also admitted that in his investigation of the other crime, it was disclosed that the deceased himself had consumed acid. P.W.10 – Tusharbhai Mohanbhai Saitalwad examined at Ex.35, was the then Medical Officer, General Hospital, Mahesana, according to him, on 26th July, 2002 at

5.00 p.m., the patient Narendrabhai was brought to him by a reference note from Visnagar Medical Officer. In the history, the patient stated that before an hour, he had consumed acid which was meant for washing of the tiles of the bathroom. He was conscious and was vomiting. His X-Ray was taken and during the treatment, on 27th July, 2002, against medical advice, his relatives had taken him from the said hospital. He produced on record reference note at Exs.37 to 39. The certificate in this respect is produced on record at Ex.36. P.W.11 – Himmatsinh Bhupatsinh Rajput examined at Ex.41, was Investigating Officer and according to him, on 27th July, 2002, he received a vardhy from Mehsana Lions Hospital about the incident and, therefore, he recorded the complaint of deceased – Narendrabhai. The complaint was got registered at Police Station and he investigated the offence. The complaint is produced on record at Ex.42. He submitted the charge-sheet against the accused in the said crime. This is all the evidence of the prosecution.

[9] From the evidence recorded during the trial, it clearly appears that the prosecution could not prove that the accused forcibly thrust acid in the mouth of the deceased. The history recorded by two Medical Officers as clearly emerges from the

record is in respect of consumption of acid by the deceased because his wife - accused No.4 had filed a complaint against him under Section 498-A of the Indian Penal Code. It is revealed through the evidence that Gayatriben had been to Visnagar Hospital for treatment because according to her, she was beaten by the deceased and from the history, a vardhy was given to the Visnagar Police Station and her complaint was recorded. The deceased died after seventeen days of consumption of acid. There is no direct evidence that the accused forced deceased to consume acid, but the fact is revealed otherwise, that deceased himself had consumed the acid because he had fear of police on account of the complaint filed by his wife – Gayatriben. The important witness, the uncle of the deceased Arvindbhai stated in clear terms that deceased had conveyed to him that on account of fear of police, he had consumed acid which was to be used for washing tiles of the toilet. The same history was given by the deceased to first Doctor, who examined deceased at Visnagar Hospital. Only evidence against the accused is the complaint given by the deceased to P.W.11. However, when the case is evaluated by other attending circumstances as above said, it clearly appears that no reliance can be placed on the complaint offered by the deceased for the fact that accused had beaten deceased and

forced him to consume acid. Nowhere in the evidence, it has been disclosed that there were injury marks on the body of the deceased and in respect of the consumption of the acid. The other contrary view that the complaint filed by the deceased is on record in the shape of evidence that the deceased himself had consumed acid, and on account of that, he died. The fact is established that accused – Gayatriben, the wife of deceased Narendrabhai filed a complaint earlier point in time before Visnagar Police Station under Section 498-A of the Indian Penal Code against the deceased and his relatives. We have the version of the deceased himself, not once but more than once that he stated before Arvindbhai and Doctors that he apprehended that on account of the complaint filed by Gayatriben, he would be arrested by the police, he had consumed alcohol himself. In this view of the matter, after appreciating the evidence as aforesaid, the trial Court took correct view to acquit the accused of the charges levelled against them. We scanned the reasons assigned by the learned trial Judge, we find that the conclusion arrived at by the trial Court for the above said reason, is probable and possible from the circumstances of the case and the evidence recorded during the trial.

[10] This is an appeal against the order of acquittal and it is well established that the orders of acquittal cannot be lightly to interfere with. It is well established also that even if the second legitimate view is possible from the view taken by the trial Court from the evidence recorded during the trial, no interference is permitted in the orders of acquittal, unless it is found that the conclusions arrived at by the trial Court are perverse, manifestly erroneous, palpably wrong and demonstrably unsustainable. While going carefully through the reasoning of the trial Court and while re-appreciating the evidence on record, we have no hesitation in concluding that the judgment and order impugned in this appeal requires no interference at all and hence, the following order.

O R D E R

Appeal stands dismissed.

[J. R. VORA,J.]

[M. R. SHAH,J.]

(vijay)